

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 8, 2002**

AGENDA ITEM NO.: **8**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Public Hearing Regarding Lease For The Awareness Garden**

RECOMMENDATION:

Approve lease and authorize the City Manager to sign on behalf of the City.

SUMMARY:

Parks and Recreation was approached in the summer of 2001 by a citizens group who wish to design and landscape an area at the Ed Page Entrance of the James River Heritage Trail as an Awareness Garden. As stated in a letter to the City, the purpose of the Garden is:

"To make the public aware that cancer touches all people... children and adults alike.

To provide scholarships through future endowments for students whose lives or families have been touched by cancer.

To foster cancer awareness through educational outreach in local area schools and colleges.

To provide a tangible, special place for people to reflect on the courage, dignity and hope of those who have overcome this disease and those who have fought it."

After meetings and discussions with the citizens planning committee, Parks and Recreation, with the approval of the City Manager's office, authorized the group to continue the planning efforts for the garden. The planning committee is committed to fund raising for the design, installation and maintenance of the garden. The group has formed a 501C3 nonprofit corporation to ensure the establishment of an organization to meet the stated mission. The City is committed to providing technical assistance, reviewing and approving all plans, and incorporating plans for the garden into other improvements at the Ed Page Entrance.

The Memorandum of Understanding is for a term of five years with provisions for renewal.

PRIOR ACTION(S):

PDC. September 3, 2002

Work Session, September 24, 2002

BUDGET IMPACT:

No impact for FY 03

Utility costs for FY 04 are estimated at \$1200.00

CONTACT(S):

Kay Frazier, 847-1640 ext 128

Andy Reeder, 847-1640 ext 110

Diana Trent, 847-1776 ext 249

ATTACHMENT(S):

Draft Memorandum of Understanding

REVIEWED BY: lkp

Resolution:

BE IT RESOLVED That the Lynchburg City Council approves a lease with the Awareness Garden Foundation.

BE IT FURTHER RESOLVED That the City Manager is authorized to negotiate appropriate terms with the Awareness Garden Foundation and to execute the necessary documents.

Adopted:

Certified: _____
Clerk of Council

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MEMORENDUM OF UNDERSTANDING:

**BETWEEN THE CITY OF LYNCHBURG AND THE AWARENESS GARDEN FOUNDATION,
INCORPORATED.**

I. PURPOSE

The purpose of this Memorandum of Understanding is to provide for continuing care and maintenance of an approximate 0.7 acre site within the Blackwater Creek Natural Area (BCNA), adjacent to the Ed Page Entrance to the James River Heritage Trail (JRHT). Volunteer members of the Awareness Garden Foundation, Incorporated (AGF) shall maintain this site as a cancer awareness garden, open to the general public, with the cooperation of the City of Lynchburg. The purpose of this MOU is to formalize the local government and non-governmental partnership, and to set forth the general terms and conditions that will guide these agencies/organizations in implementing the goals of the Awareness Garden well into the 21st century.

II. PREMISE/BACKGROUND

The overall concept of an Awareness Garden is uniquely compatible with the mission of the Parks & Recreation Division, as stewards and managers of municipal public park properties. In addition, the garden strengthens the interpretive and educational goals of the City. In the fall of 2001, the concept of a public/private partnership dedicated to the establishment of an Awareness Garden was proposed to City staff. An exploratory committee of public/private personnel was formed and over the course of the next year design and site selection criteria was developed. An exhaustive search of available public properties was concluded in the Spring of 2002. At that time, the Ed Page Entrance of the Blackwater Creek Natural Area (a section of the James River Heritage Trail) was selected as the location of the proposed Awareness Garden by both representatives of the City and members of Awareness Garden Foundation, Board of Directors.

III. BENEFITS

The objectives of the AGF are to establish, organize and maintain a garden located in the City of Lynchburg, Virginia: to use the garden and the foundation to make the public aware that cancer touches all people; to provide scholarships through future endowments for students whose lives or families have been touched by cancer; to foster cancer awareness through educational outreach in local area schools and colleges; and to provide a tangible, special place for people to reflect on the courage, dignity and hope of those who have overcome this disease and those who have fought it.

IV. TERM

The goals of both the AGF Board and the City of Lynchburg, shall be the establishment of an Awareness Garden within the City of Lynchburg. Furthermore, that because of substantial investment in monies, time, and other resources by volunteers, Awareness Garden Foundation, Incorporated, and the City of Lynchburg, such a garden shall exist for the foreseeable future as a part of the Lynchburg Parks & Recreation system.

The parties acknowledge that in order to design, develop and implement the Awareness Garden that is the subject of this agreement, the AGF will have to raise from private sources (individuals and grant) in excess of \$150,000.00. The parties further acknowledge that said funds will likely be spent in accomplishing AGF's goals by the anticipated date of completion of phase I (July 1, 2004). In consideration of AGF's agreement to raise and expend funds to

improve the site, the parties specifically agree that AGF shall have use of the City property defined herein and referenced in the attached plat (see Exhibit A), for the purposes defined herein, for a period of five years from the date of this Agreement, during which time this Agreement may be terminated only for good cause shown. Thereafter, every five years this Agreement can be renewed for an additional five-year term, absent a showing of good cause for it not being renewed. During the extension of this Agreement it shall remain terminable upon showing of good cause by either party. This MOU is an initial agreement and it is anticipated that in the near future a franchise agreement will be pursued that complies with all terms of the Virginia Franchise Act. Such an agreement is anticipated to cover a twenty-year period.

IV. AWARENESS GARDEN FOUNDATION, INC. RESPONSIBILITIES

The Awareness Garden Foundation, Board shall be responsible for fulfilling the goals and specific objectives of the Awareness Garden as well as the day-to-day operational needs of the facility. The AGF Board will work collaboratively with the City of Lynchburg to identify funding sources (capital and operating), develop public/private partnership opportunities, and identify promising opportunities for specific park-based projects. The AGF Board shall provide leadership in identifying creative public/private financing opportunities for implementing educational and renewable energy projects. The AGF Board shall provide analyses of garden improvements throughout the site, an inventory of ongoing and potential sustainable projects (including those planned and implemented by Awareness Garden Foundation and the City of Lynchburg), and recommendations on specific projects designed to have maximum exposure to the public. Finally, AGF will also provide volunteer staffing, interpretive education, and special event/site use oversight.

V. CITY RESPONSIBILITIES

The City of Lynchburg, through the Division of Parks & Recreation, shall be responsible for overall natural resource management of the Awareness Garden site as a part of the municipal park system. Furthermore, the City shall be committed in spirit to the long-term commitment of an Awareness Garden at said location. The City of Lynchburg, Parks & Recreation Division will work collaboratively with Awareness Garden Foundation, Inc. to identify funding sources, develop public/private partnership opportunities, and identify promising opportunities for specific park-based projects. The Lynchburg Parks & Recreation Division (LPRD) will provide technical and resource support to the Awareness Garden to develop appropriate plantings/landscaping and overall site design criteria that meets or exceeds current generally accepted parks & recreation best management practices. The LPRD will provide an assessment of the technical and economic feasibility of proposed projects and leadership in ensuring landscape plantings and educational initiatives are linked to ongoing maintenance, cyclic and future construction projects. The LPRD will provide leadership in ensuring education is integrated into project design and making the visiting public aware of the importance and value of preventative cancer practices and early detection. They will coordinate and implement a comprehensive site management plan for the sustained and long-term preservation of the site as an Awareness Garden. LPRD shall assume payment of all utility bills and site security. Further the City shall provide the garden site with a water supply at City cost from which AGF may install an irrigation system at AGF's cost. The city shall assume responsibility for the cost of water.

VI. COMPLIANCE WITH FEDERAL AND STATE RULES AND REGULATIONS

The AGF and the City of Lynchburg, in conformance with all applicable state and federal laws and regulations, shall perform all activities specified in this MOU.

VII. EFFECTIVE DATE

This agreement is effective immediately upon acceptance by the AGF Board and the City of Lynchburg.

VIII. COMPLETION

A deadline of July 1, 2004 has been set for final construction completion (Phase I Development).

IX. CHANGES TO THIS MOU

The Awareness Garden Foundation, Incorporated and the City of Lynchburg may agree in writing to modify this MOU at any time. This MOU shall be reviewed every twenty-four (24) months during a formal meeting between the AGF Board and representatives of the City of Lynchburg.

X. INDEMNIFICATION

To the extent that is legal, each of the parties agrees to indemnify and hold harmless the other, its officers, employees and agents, from all claims made against such other party, its officers, employees and agents, resulting from such party's performance of its obligations under this MOU. However, if such claim arises solely from the action of the party, its officers, employees and agents, against whom the claim is made, this indemnity does not apply.